



## HOUSTON INDEPENDENT SCHOOL DISTRICT

HATTIE MAE WHITE ADMINISTRATION BUILDING  
3830 RICHMOND AVENUE • HOUSTON, TEXAS 77027-5838

ABELARDO SAAVEDRA, Ph.D.  
Interim Superintendent of Schools

COPY

Letter of Appeal  
Schools and Libraries Division  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, New Jersey 07981

As pertains to:

Applicant: Houston Independent School District

Form 471 Application: 441116

Billed Entity Number: 141223

Funding Year: 2005

FRN: 1224875, 1224877, 1224882, 1224884, 1224886, 1224895, 1224900, 1224906,  
1124914

Pre-discount Amount: \$4,309,032.85 (total for 9 FRNs)

Amount of Funding Request: \$3,619,587.60 (total for 9 FRNs)

Funding Commitment Decision: Not Funded

August 31, 2005

To Whom It May Concern:

Houston Independent School District (HISD) wishes to appeal the decision for the Year 2005 funding commitment decision letter dated July 7, 2005 471 Application number 441116, pertaining to funding request numbers:

- 1224875, representing the request for the cost for installation of Phonoscope fiber and modulating equipment serving 2 school district sites within HISD.
- 1224877, representing the request for annual management fees for Phonoscope fiber and modulating equipment serving 12 schools within HISD.
- 1224882, representing the request for annual management fees for Phonoscope fiber and modulating equipment serving 82 schools within HISD.
- 1224884, representing the request for the third year of a 3-year amortized cost for installation of Phonoscope fiber and modulating equipment serving 143 school sites within HISD.
- 1224886, representing the request for annual management fees for Phonoscope fiber and modulating equipment serving 143 schools within HISD.
- 1224895, representing the request for the second year of a 3-year amortized cost for installation of Phonoscope fiber and modulating equipment serving 32 school sites within HISD.
- 1224900, representing the request for annual management fees for Phonoscope fiber and modulating equipment serving 32 schools within HISD.

- 1224906, representing the request for the cost for installation of Phonoscope fiber and modulating equipment serving 15 school sites within HISD.
- 1224914, representing the request for annual management fees for Phonoscope fiber and modulating equipment serving 15 schools within HISD.

The funding commitment decision explanation states:

**“30% or more of this FRN includes a request for Dark Fiber which is an ineligible product(s)/service(s) based on program rules.”**

HISD disagrees with the stated funding commitment decision for the given funding requests. The Fiber Optic Network managed by Phonoscope has three notable segments:

A.) **Ring** - a managed “lit fiber” ring around the district that contains several major “hub” sites to which several “spoke” or “feeder” sites connect.

B.) **Ring to feeder** - a managed “lit fiber” connection from the ring “hub” sites to several “spoke” or “feeder” sites.

C.) **Final handoff to HISD local-area networks** - A managed lit fiber “final handoff” link at every site (both hub and feeder) between the provider’s network switch GBIC and our network switch GBIC. From HISD’s local network point of view, *the first inline piece of modulating equipment* that interfaces with HISD’s handoff link at each site is the modulating GBIC device located within Phonoscope’s managed uplink switch.

For cases A and B above, clearly the provider is managing a lit fiber service for HISD. At every site they provide a modulated lit fiber connection that is handed off to an existing local network in HISD. Also, note that for the Fiber Optic Network to operate, modulating electronics are provided by Phonoscope for all pathways along the fiber network. To paraphrase, the Fiber Optic Network is completely managed by our provider, Phonoscope. HISD receives a lit-fiber handoff from Phonoscope at each HISD site, and Phonoscope totally manages the inner workings of the Fiber Optic Network using their own fiber, switches, and modulating electronics.

There is one ambiguous point concerning case C for the Fiber Optic Network described above, pertaining to the FCC/SLD guidelines. It appears that the changes posed by the new FCC regulations on dark fiber services only relate to the fiber connection mentioned in our case C above. This is the point of final handoff of fiber between the Phonoscope-managed network “GBIC” and HISD’s GBIC for the local network at each school. **To clarify this issue, we would like to point out that the Phonoscope uplink GBIC at each site is *the first inline piece of equipment* acting as modulating electronics, for the final handoff link between the provider and HISD. The fiber link would not be operable if we attempt to bypass the provider’s (Phonoscope) GBIC and connect directly to the uplink fiber. The GBIC cards in our local switches that may be deemed as modulating equipment by the FCC only exist to physically accept the handoff “lit fiber” from Phonoscope, and are not represented in the above funding requests. The GBIC cards in our local switches are not sufficient to be considered as “modulating electronics” to directly accept the fiber from Phonoscope without first connecting to the Phonoscope GBIC and device.**

HISD did not request funding for installation of Dark Fiber, therefore we respectfully ask SLD to reconsider their decision not to fund the nine FRNs represented in this appeal. Please contact me for any further information you may require. I look forward to hearing from the SLD very soon.

Contact Name: Jacqueline Martin  
Address: 3830 Richmond Ave. Level 2 East, Houston, TX 77027  
Telephone: (713) 892-6222 x307  
Fax: (713) 892-6749  
Contact e-mail: [jmartin6@houstonisd.org](mailto:jmartin6@houstonisd.org)

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Palmer', with a stylized flourish at the end.

Laura Palmer  
Assistant Superintendent, Interim



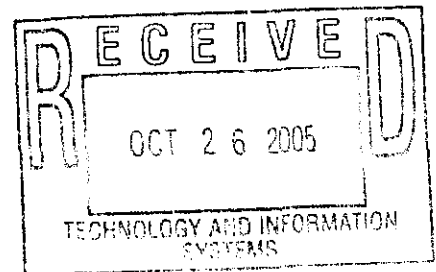
**Universal Service Administrative Company**  
Schools & Libraries Division

---

**Administrator's Decision on Appeal – Funding Year 2005-2006**

October 18, 2005

Laura Palmer  
Houston Independent School District  
3830 Richmond Avenue  
Houston, TX 77027



Re: Applicant Name: HOUSTON INDEP SCHOOL DISTRICT  
Billed Entity Number: 141223  
Form 471 Application Number: 441116  
Funding Request Number(s): 1224875, 1224877, 1224882, 1224884, 1224886,  
1224895, 1224900, 1224906, 1224914  
Your Correspondence Dated: August 31, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1224875, 1224877, 1224882, 1224884, 1224886,  
1224895, 1224900, 1224906, 1224914

Decision on Appeal: **Denied**

Explanation:

- On appeal for FRNs 1224875, 1224877, 1224882, 122884, 1224886, 1224895, 1224900, 1224906, and 1224914 you seek reversal of the SLD decision "30% or more of these FRNs included a request for Dark Fiber which is ineligible products(s)/service(s) based on program rules." You disagree and state it is for Lit Fiber service. You provided supporting documentation.
- Upon review of your appeal letter and the relevant supporting documentation, it was determined that the original request was correctly denied. On appeal you submitted new information to support the appeal. Program rules do not permit the SLD to accept new information on appeal except where an applicant was not

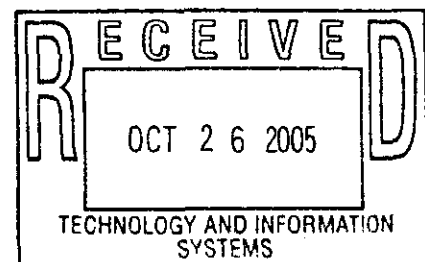
given an opportunity to provide information during the initial review or an error was made by SLD. It is the applicant's ultimate responsibility to ensure the accuracy of the information submitted during the application process.

- Your Form 471 application included costs for the following ineligible products and services: Dark Fiber and Private Network. FCC rules provide that discounts may be approved only for eligible products and services. 47 C.F.R. §§ 54.502, 54.503. The USAC web site contains a list of eligible products and services. See the web site, [www.sl.universalservice.org](http://www.sl.universalservice.org), Eligible Services List. FCC rules require that if 30% or more of an applicant's funding request includes ineligible products and services, the funding request must be denied. 47 C.F.R. § 54.504(c)(1). 100% of your funding request was for ineligible products and services. Therefore, your funding request was denied. You did not demonstrate in your appeal that your request included less than 30% for ineligible products and services. Consequently, SLD denies your appeal.

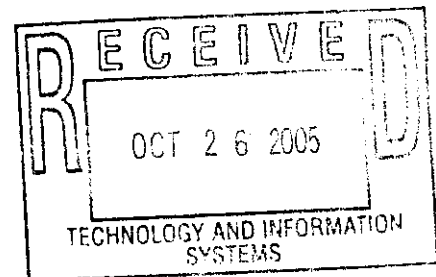
If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company



Laura Palmer  
Houston Independent School District  
3830 Richmond Avenue  
Houston, TX 77027



Billed Entity Number: 141223  
Form 471 Application Number: 441116  
Form 486 Application Number:



**Universal Service Administrative Company**  
Schools & Libraries Division

---

Date: May 17, 2005

Dear Jacqueline Martin  
Houston Independent School District  
(713) 892-6222  
Application Number: 441116

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2005 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

- **All FRNs**

- Please provide a copy of the vendor quote substantiating each FRN
- For FRNs 1224875, 1224877, 1224882, 1224884, 1224886, 1224895, 1224900, 1224906, and 1224914 for Internet Access services, please certify that the services will only be delivered to eligible users at eligible locations. The rules of this support mechanism do not allow for services or products to be provided to residential homes or other non-school/library facilities (i.e., students and teachers may not dial in from home to access the Internet; there can be no community access, etc). If this funding request for Internet Access is strictly limited to services used only at eligible locations by eligible users, then please certify in writing the following:

**"The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to the Internet will not be provided to homes or other non-school or non-library sites."**

(Signed) \_\_\_\_\_  
(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

**The above certification must be word for word, and be signed and dated. If you are unable to make such a certification, because the statement is not correct, please indicate such.**

- Based upon review of your Form 471 application, it appears that FRNs 1224875, 1224877, 1224882, 1224884, 1224886, 1224895 and 1224900 have the same contract number as Funding Year 2004 FRNs 1135973, 1136206, 1136285, 1136449, 1136548 and 1136899, and the Contract Expiration Date submitted in Block 5, Item 20, has changed from 6/30/2005 to 6/30/2006.

The rules of this support mechanism require that a new Form 470 be posted for 28-Days prior to extending the existing contract, unless the establishing Form 470 for the original contract made all potential bidders aware of your ability to extend the contract beyond its initial term. Please answer the following question, and provide the requested documentation as indicated:

- Please provide a copy of the full contract, and any applicable contract extensions.
- Did the contract Expiration Date change from what was reported on FRNs 1135973, 1136206, 1136285, 1136449, 1136548 and 1136899 on Funding Year 2004 Form 471 Application number 398831?

If so, please provide the 15-digit Form 470 that established the bidding for the contract extension. The establishing Form 470 is the specific Form 470, which was posted for that particular service for 28 days, and pursuant to which a contract was signed, extended, or an agreement was entered into. For a request in the Basic Maintenance service category, it is possible that the establishing 470 was filed under an Internal Connections service category. The establishing 470 could have been posted by the State, if the requested services are being purchased off of a State Master Contract. If your contract extension was not posted for 28-Days to a new Form 470, please indicate such.

If the contract extension was not posted to a new Form 470 for 28 days, please provide any relevant bid information, such as a copy of the request for proposals (RFP), that was relied upon when the original contract was competitively bid and signed.

- For FRN 1224906 & 1224914, the Contract Award Date (12/14/2000) for the services requested is before the Allowable Contract Date (10/15/2004) of the cited Form 470.

The rules of this support mechanism require that the CAD be after the ACD. Please answer the following question, and provide the requested documentation as indicated:

- Please provide a copy of the full contract, signed and dated by both parties, to verify the correct CAD, and also verify if the referenced Form 470 is the establishing Form 470 for the services to the entity on this Form 471.

If the referenced Form 470 is NOT the establishing Form 470, please provide the 15-digit Form 470 Number that did establish the bidding for the FRN. The establishing Form 470 is the specific Form 470, which was posted for that



**particular service for 28 days, and pursuant to which a contract was signed or an agreement was entered into. The establishing 470 could have been posted by the State, if the requested services are being purchased off of a State Master Contract.**

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

**Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.**

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Mike Maciej  
Schools And Libraries Division  
Program Integrity Assurance  
Phone: 973-560-4467  
FAX: 973-599-6513  
[mmaciej@sl.universalservice.org](mailto:mmaciej@sl.universalservice.org)

To: Michael Maciej (PIA Team 6)  
Schools and Libraries Division  
973 599-6513

From: Jacqueline Martin  
Houston ISD  
BEN: 141223

Re: Request dated May 17, 2005  
Subject: App. 441116 Follow-up Questions

Mr. Maciej,  
Please see below the responses to your request.

- All FRNs

- Please provide a copy of the vendor quote substantiating each FRN  
Please see the attached vendor quotes (p. R22, R26-29, R32-38, R43-44, R49)
- For FRNs 1224875, 1224877, 1224882, 1224884, 1224886, 1224895, 1224900, 1224906, and 1224914 for Internet Access services, please certify that the services will only be delivered to eligible users at eligible locations. The rules of this support mechanism do not allow for services or products to be provided to residential homes or other non-school/library facilities (i.e., students and teachers may not dial in from home to access the Internet; there can be no community access, etc). If this funding request for Internet Access is strictly limited to services used only at eligible locations by eligible users, then please certify in writing the following:

"The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to the Internet will not be provided to homes or other non-school or non-library sites."

(Signed)

Jacqueline K Martin

(Name)

Jacqueline K Martin  
Jacqueline K Martin

(Title)

project manager  
Project Manager

(Date)

5-24-2005  
May 24, 2005

- Based upon review of your Form 471 application, it appears that FRNs 1224875, 1224877, 1224882, 1224884, 1224886, 1224895 and 1224900 have the same contract number as Funding Year 2004 FRNs 1135973, 1136206, 1136285, 1136449, 1136548 and 1136899, and the Contract Expiration Date submitted in Block 5, Item 20, has changed from 6/30/2005 to 6/30/2006.

The rules of this support mechanism require that a new Form 470 be posted for 28-Days prior to extending the existing contract, unless the establishing Form 470 for the original contract made all potential bidders aware of your ability to extend the contract beyond its initial term. Please answer the following question, and provide the requested documentation as indicated:

- Please provide a copy of the full contract, and any applicable contract extensions.  
**Please see the attached copy of the full contract (00-11-6) along with its addendums/applicable extensions.**
- Did the contract Expiration Date change from what was reported on FRNs 1135973, 1136206, 1136285, 1136449, 1136548 and 1136899 on Funding Year 2004 Form 471 Application number 398831?  
**Yes, the contract Expiration Date changed from what was reported on FRNs 1135973, 1136206, 1136285, 1136449, 1136548, and 1136899 on Funding Year 2004 Form 471 Application number 398831.**

If so, please provide the 15-digit Form 470 that established the bidding for the contract extension. The establishing Form 470 is the specific Form 470, which was posted for that particular service for 28 days, and pursuant to which a contract was signed, extended, or an agreement was entered into. For a request in the Basic Maintenance service category, it is possible that the establishing 470 was filed under an Internal Connections service category. The establishing 470 could have been posted by the State, if the requested services are being purchased off of a State Master Contract. If your contract extension was not posted for 28-Days to a new Form 470, please indicate such.

**The 15-digit Form 470 that established the bidding for the contract extension is 651570000501547.**

- For FRN 1224906 & 1224914, the Contract Award Date (12/14/2000) for the services requested is before the Allowable Contract Date (10/15/2004) of the cited Form 470.


The rules of this support mechanism require that the CAD be after the ACD. Please answer the following question, and provide the requested documentation as indicated:

- o Please provide a copy of the full contract, signed and dated by both parties, to verify the correct CAD, and also verify if the referenced Form 470 is the establishing Form 470 for the services to the entity on this Form 471.

**Please see the attached copy of the full contract, signed and dated by both parties that verifies the Contract Award Date of February 1, 2004 (see page R48). The referenced Form 470 (#651570000501547) is the establishing Form 470 for the services to the entity on this Form 471. The service provider, Phonoscope, was the only vendor who responded to the establishing 470.**

Please feel free to contact me if you need any additional information.

Sincerely,



Handwritten signature of Jacqueline Martin in cursive script.

Jacqueline Martin

Project Manager

BEN: 141223 - Houston Independent School District

Technology and Information Systems

713 892-6222 x307

[jmartin6@houstonisd.org](mailto:jmartin6@houstonisd.org)

---

**Fiber Optic Network Lease Agreement**

**Of**

**District Wide Area Fiber Optic Network**

**For**

**Houston Independent School District**

RFP# 00-11-6

---

**Prepared by**

**Phonoscope, Ltd.**

## FIBER OPTIC NETWORK LEASE AGREEMENT

This Fiber Optic Network Lease (this "Agreement") is by and between **PHONOSCOPE, LTD.** ("Phonoscope"), a Limited Partnership, having its principal office at 6105 Westline, Houston, Texas 77036 and **HOUSTON INDEPENDENT SCHOOL DISTRICT** (the "District"), an independent school district and political subdivision of the State of Texas located in the greater Houston area and having its central office at 3830 Richmond Avenue, Houston, Texas 77027.

WHEREAS, The District has awarded to Phonoscope the Request for Proposal, Project Number 00-11-6 for a District Wide Area Network Fiber Optic Network.

WHEREAS, Phonoscope desires to provide District Wide Area Fiber Optic Network to the District on a lease basis according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, it is agreed by both parties as follows:

### I. Applicable Fiber

- A. **Statement of Work and Six-strand fiber Network:** Phonoscope shall provide and construct as necessary for the District, a District Wide Area Fiber Optic Network Installation ("DWAFFON") as more particularly described in a document entitled "Statement of Work of District Wide Area Fiber Optic Network For Houston Independent School District" (the "Statement of Work") between Phonoscope and the District, the provisions of which Statement of Work are incorporated by reference as though set out in full herein and is considered a part of this Agreement. Phonoscope and the District acknowledge receiving a copy of the Statement of Work.
- B. **Applicable Fiber; Termination at Sites:** The "Applicable Fiber", as used herein, shall refer to the DWAFFON to be built pursuant to and as described in the Statement of Work. The Applicable Fiber does not include the onsite equipment, which the District will use to interface with the DWAFFON. The DWAFFON will be terminated at each of the sites as identified in the Statement of Work. The Applicable Property

is an inseparable part of Phonoscope's network consisting of fiber optic cables and appurtenances related thereto located in and near Harris County, Texas (the "Fiber Network") and is comprised of access to specific fibers within the Fiber Network, as identified in the Statement of Work, for exclusive use by the District.

- C. **Exclusive Use of Applicable Fiber:** Phonoscope hereby leases to the District and the District hereby leases from Phonoscope the exclusive right to use only the Applicable Fiber for the term and in accordance with the terms and provisions hereof.
- D. **Property of Phonoscope:** The Applicable Fiber is and shall remain the property of Phonoscope or its assigns and the District's interest is only that of a lessee. Any cabling, hardware, software and terminal equipment purchased by the District outside of the Statement of Work are and will remain the property of the District.
- E. **Upgrading Services:** Phonoscope will inform the District about upgradeable services in a timely manner and within reason, provide this upgraded service to District without penalty and at rates not to exceed Phonoscope's standard rates.

## II. Term

- A. **Commencement:** The term of this Agreement shall commence on the date of execution of this Agreement. The date the term of this Agreement commences is hereafter called the Commencement Date.
- B. **Termination:** The term of this Agreement shall end on the fifteenth (15<sup>th</sup>) annual anniversary of the last day of the calendar month following the month in which the Commencement Date occurs.
- C. **Right of Renewal:** At the end of the initial term, this Agreement shall automatically renew for successive one (1) year terms, unless either party gives thirty (30) days' prior written notice, sent via certified mail, return receipt requested, of its intent to cancel this Agreement.
- D. **Limit of Appropriation:** Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that the District has available the total maximum sums hereinafter certified available by the HISD Controller for the purpose of satisfying District's obligations for the initial term of this Agreement.

Notwithstanding these certified funds, Phonoscope has been advised and understands that the funding of this Agreement is subject to approval of and annual appropriation by the Board of Education of HISD, and agrees that should the Board of Education fail to approve a budget for the District which includes sufficient funds for the continuance of this Agreement or should the District fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate and the District shall have no further obligation to Phonoscope, and the sole and exclusive remedy of Phonoscope shall be to terminate this Agreement.

### III. Fiber Optic Network Lease Fee

- A. **Installation Fees:** In consideration for Phonoscope constructing the Applicable Fiber, the District agrees to pay the sum of Two Million Two Hundred Twenty-Four Thousand Six Hundred Dollars (\$2,224,600.00). This amount shall be amortized over a three (3) year period, as described in Table A.1.
- B. **Basic Fiber Optic Network Lease Fee:** In consideration for the use of the Applicable Fiber, the District agrees to pay Fifty Dollars (\$50.00) per month, per site ("Fiber Lease Fees") described in Table A.1 of the Statement of Work (hereinafter referred to as the "District's Fiber Lease Fee"). The District's Fiber Lease Fee as described on Table A.1 of the Statement of Work herein, shall be payable within thirty (30) days of invoices for work or invoices not in dispute. Amounts payable shall be billed in accordance with the prorated costs identified in Table A.1 herein. All Deliverables associated the completion of each site shall be submitted to the District prior to, or simultaneously with, the presentation of the invoice by Phonoscope.
- C. **Fiber Optic Maintenance Fees:** In consideration for Phonoscope providing maintenance to the Applicable Fiber throughout the term of this Agreement, the District agrees to pay Fifty Dollars (\$50.00) per month, per site, as described in Table A.1 of the Statement of Work. The Fiber Lease Fee shall include all routine maintenance but shall explicitly not include ("Excluded Maintenance") any service calls performed by Phonoscope whose cause is not attributable to the Applicable Fiber, such as those attributable to any actions or equipment provided by the District or its employees, affiliates, agents, subcontractors, or vendors. However, any maintenance caused by fiber cuts or outages caused by any third party other than the



District or the District's employees, agents, or contractors shall be repaired and restored at no additional cost to the District. Any Excluded Maintenance performed by Phonoscope shall be billed at the Hourly Rate as defined below).

Any Excluded Maintenance performed by Phonoscope shall be billed at the Hourly Rate of Three Hundred Fifty Dollars (\$350.00) on an hourly basis with a four (4) hour minimum, inclusive of all labor, equipment, and material costs. These charges will be billed directly to the District by Phonoscope.

**D. CPIU Rate Adjustment:** Commencing at the 1<sup>st</sup> of the month following the third (3<sup>rd</sup>) anniversary of this Agreement, the Basic Fiber Optic Network Lease Fee and the Fiber Optic Maintenance Fee shall be adjusted based on the Consumer Price Index for All Urban Workers (CPI-U) published by the United States Department of Labor, U.S. City Average (1982-1984 = 100). If the Actual Consumer Price Index (the "ACPI") is higher than the corresponding CPI for the immediately preceding annual anniversary of the calendar month following the month in which the Commencement Date occurs (or, in the case of the first such annual anniversary, on the first day of the calendar month following the month in which the Commencement Date occurs), then the rate shall be adjusted upwards, multiplied by a fraction, the numerator of which is the CPI as of such relevant anniversary, and the denominator of which is the CPI for the first day of the calendar month following the month in which the Commencement Date occurs. Should the Consumer Price Index for All Urban Workers (CPI-U) published by the United States Department of Labor, U.S. City Average (1982-1984=100) cease to be published, Phonoscope and District shall select a different index which, in their reasonable judgment, is reasonably equivalent to the Consumer Price Index for All Urban Workers (CPI-U) published by the United States Department of Labor, U.S. City Average (1982-1984=100).

**E. Invoicing:** Phonoscope will adjust its billing policy and process to confirm to the USF and the E-rate payment plan. Phonoscope will invoice Eighteen Percent (18%) of the service and support provided, directly to District. Phonoscope will invoice the SLC or the USF Administration Designee the remaining Eighty-Two percent (82%) of the contracted amount. Invoices for the Installation Fees, the District's Basic Fiber Lease Fees, Fiber Optic Maintenance Fees, and any Excluded Maintenance will be submitted on a work completion

basis as described in Table A.1. Phonoscope will show the full amount of the invoice and then show the appropriate percentage due from the District and from the USF.

If in the event E-rate funding is not available, or not available in sufficient amounts to cover the Eighty-Two percent (82%) contemplated by this Agreement, the District shall notify Phonoscope within two (2) business days of receiving knowledge of the loss, or decrease, in funding. At such time, Phonoscope shall have the right to suspend any and all obligations to proceed with construction of the DWFON unless the District provides written assurance of alternate funding which will be made available to fulfill its payment obligations.

**F. Taxes and Fees:** The District is exempt from any and all applicable Federal and State Taxes. Certain fees such as municipal franchise fees, FCC, or Texas Public Utility Commission (PUC) or any other assessed governmental regulatory fees may apply, if applicable. The District will furnish Tax-exempt information upon request by Phonoscope.

**G. Where and How Payable:** All of District's Fiber Lease Fees and Excluded Maintenance ("Fees") shall be due and payable at Phonoscope's office at 6105 Westline Drive, Houston, Harris County, Texas 77036 or at such other address as Phonoscope shall specify by notice to the District. Time is of the essence with respect to the dates required for the payment of Fees. Any payment not paid when due shall bear a penalty at a rate equal to one percent (1 %) per month of the amount due from the date due (in the event the penalty is deemed interest, in no event shall Phonoscope receive greater than the lawful rate of interest).

The District shall remit to Phonoscope after receiving one invoice itemizing the charges per site. Invoices shall be sent to Bill Edwards addressed as follows:

Bill Edwards  
Project Coordinator  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027

#### IV. Insurance Requirements

- A. No Work Commences Until Insurance Secured:** Phonoscope shall not commence any portion of the work under this Agreement until it has obtained all the insurance required herein and original certificates of such insurance have been filed with the District.
- B. Phonoscope's Insurance:** Phonoscope shall maintain in force throughout the term of this Agreement the insurance policies described below and provide the District with an original certificate of insurance as evidence. Copies of such insurance documents shall be part of the Agreement and Phonoscope shall maintain such in force throughout the term of any agreement between the parties.

##### Casualty Insurance

1. Workers' Compensation as statutory provisions require.
2. Commercial General Liability Insurance

Bodily Injury and Property Damage:

Each Occurrence/Aggregate                      \$1,000,000

3. Business (Commercial) Automobile Liability Insurance

Combined single limit                                      \$1,000,000

Umbrella Liability Insurance

(Excess)    \$1,000,000

Any insurance requirements requested by the District in excess of those listed herein may be subject to an additional cost to be borne by District.

All insurance shall be obtained from responsible insurers licensed to do business in the State of Texas. Phonoscope shall provide at least forty-five (45) days prior written notice before any alternation, modification or cancellation of any policies. District shall be named as an additional insured on all liability policies and the liability policies shall be adjusted to provide a waiver of subrogation against District for claims, which arise during the performance of this Agreement.

## V. Safety Precautions and Programs

- A. Safety Precautions:** Phonoscope shall be responsible for initiating, maintaining and supervising all its own internal safety precautions and programs in connection with its employees during the performance of its obligations under this Agreement.

In the event Phonoscope encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB), which has not been rendered harmless by applicable law, Phonoscope shall immediately stop work in the area affected and report the condition to the District in writing. If in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless by applicable law, the work in the affected area shall not thereafter be resumed except by written agreement of the District and Phonoscope. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless. Phonoscope shall not be required to perform any work relating to the removal or rendering harmless asbestos or polychlorinated biphenyl (PCB).

- B. Safety of Persons and Property:** Phonoscope shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent the damage, injury or loss to:

- Its employees performing the work under this Agreement and other persons who may be affected thereby;
- The work; materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Phonoscope or Phonoscope's sub-contractors or sub-subcontractors; and
- The District's property, personnel, students, employees and invitees.

Phonoscope shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any governmental entities or public authorities having jurisdiction over the safety of person or property or their protection from damage, injury or loss. Phonoscope shall erect and maintain, as required by existing conditions and performance of this Agreement, reasonable safeguards for safety and protection, including erecting safety barriers and other warnings against

hazards. Prior to commencement of any portion of the work on the District's premise, which utilizes machinery and equipment, Phonoscope and the District shall mutually agree on a written policy governing the use of such machinery and equipment.

When use, transport or storage of explosives or other hazardous materials or equipment of unusual methods are necessary for execution of the work, Phonoscope shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel and shall provide the District with prior written notice anytime such materials are to be used, transported or stored within the vicinity of school property.

Phonoscope shall promptly remedy, or cause to be remedied, any damage and loss to the District's sites, including, without limitation, the District's building, improvements and/or personal property, caused by Phonoscope, a sub-contractor or a sub-subcontractor, except damage or loss attributable to acts or omissions of the District or anyone directly or indirectly employed by the District, or by anyone for whose acts the District may be liable.

- C. **Emergencies:** In an emergency affecting safety of persons or property, Phonoscope shall act, at Phonoscope's discretion, to prevent threatened damage, injury or loss. An extension of time claimed by Phonoscope on account of an emergency shall be determined as provided in Section XII.H.

## VI. Use

- A. **Use:** The District agrees that only District's own signals will be carried over the Dark Fiber specified in this Agreement, and specifically agrees not to resell the use of the Dark Fiber for the purposes of transmitting a third Party's Signal. The District shall not extend the Applicable Fiber in any manner nor shall the District access or allow any third party to access, any of Phonoscope's splice points. In no event shall the District allow any telecommunications service provider or any other third party who offers competitive services to Phonoscope, to utilize or resell usage of the Applicable Property. If the parties negotiate a District access or interconnect to any of Phonoscope's splice points, additional cost may be incurred

## VII. Maintenance by Phonoscope

- A. **Twenty-Four by Seven:** Phonoscope shall maintain the Applicable Fiber seven days per week, twenty-four hours per day, at no additional cost to the District. Maintenance services will be provided either by Phonoscope or by affiliates or contractors. The District shall contact Phonoscope at any time by calling (713) 272-4600. Phonoscope shall notify the District in writing, of any change or additions to this contact telephone number.
- B. **Response Time:** Upon notification from the District of a malfunction relating to the Applicable Fiber, Phonoscope shall respond to such malfunction within two (2) hours and thereafter proceed to correct the malfunction with reasonable diligence.
- C. **Planned Maintenance:** Phonoscope shall make reasonable effort to give the District at least three (3) Business Days notice of any planned maintenance resulting in interruption of service.
- D. **Malfunction Defined:** As used herein, a "malfunction" shall mean the failure of the Applicable Fiber or any portion thereof to meet the specifications set forth within Exhibit "B" herein.
- E. **Guaranteed Uptime:** The service at each site proposed under this Agreement must be guaranteed available at an uptime level of 99.9% per month per site. Uptime will be calculated as follows:

$$\% \text{ Monthly Uptime} = \frac{(\text{Available time} - (\text{down time}))}{\text{Available time}} \times 100$$

Available time is defined as twenty-four (24) hours times the number of days in the month in question per site. Downtime is defined as the total time each month that service is unavailable commencing from the time that a request for service call is placed until the services are fully restored; however, downtime does not include Force Majeure or planned maintenance.

### VIII. Default

- A. **Default by District:** The District shall be in default hereunder if the District does not cure any default by it hereunder on or before a date which is thirty (30) days after Phonoscope gives the District notice of such default.
- B. **Remedies Upon Default:** At any time while the District is in default hereunder and while such default continues, Phonoscope may, in addition to its other remedies under law, (i) suspend its performance of maintenance services; (ii) render the Applicable Fiber inoperable, or (iii) disconnect the Applicable Fiber from the District's premises and terminate this Agreement.
- C. **Remedies After Notice:** If the District is in default hereunder and such default continues for a period of thirty (30) days after notice of such default from Phonoscope to the District, Phonoscope may at any time thereafter while such default continues, terminate this Agreement.
- D. **Default by Phonoscope:** If Phonoscope become insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings, or makes an assignment for the benefit of creditors, the District will have the right (without limiting any other rights or remedies that it may have in the contract or by law) to immediately terminate this contract with written notice to Phonoscope.

The District may otherwise terminate this Agreement by giving written termination notice to Phonoscope specifying a termination date at least thirty (30) days after the date such notice is given if, and at any time after, the following event occurs:

Service to the Standards is not provided, for any reason other than the District's own act or omission, in compliance with the Guaranteed Uptime stated herein.

Phonoscope shall be in default hereunder if Phonoscope does not perform any of its obligations hereunder and Phonoscope is unable to remedy the default to the reasonable satisfaction of the District within thirty (30) days after the District has given Phonoscope notice specifying such non-performance with particularity. If Phonoscope is

in default hereunder, then at any time thereafter while such default continues, the District may, at the District's sole remedy, notify Phonoscope that it intends to terminate this Agreement on and as of any date (not less than thirty [30] days after the date of the notice exercising such right), in which event Fiber Lease Fees shall cease to accrue from and after the date of termination unless Phonoscope cures such default prior to the termination date, in which event this Agreement will not be terminated. In the event of any such termination by the District, the District shall additionally have the right to compel Phonoscope to assign this Agreement to a mutually acceptable qualified contractor (and in the event of any such assignment, this Agreement shall not terminate, but performance hereof shall thereafter be by such assignee). The District will then be relieved of all obligations, except to pay the value of Phonoscope's prior performance (at the contract rate).

- E. LIMITATION:** PHONOSCOPE IS NOT RESPONSIBLE FOR AND DISTRICT AGREES NOT TO SEEK OR COLLECT ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM DISTRICT'S USE OF OR INABILITY TO USE THE APPLICABLE FIBER EITHER ALONE OR IN COMBINATION WITH OTHER EQUIPMENT OR SERVICES.

## **IX. Assignment**

- A. Assignment:** Nither Phonoscope nor the District may assign its rights, duties and obligations hereunder except upon prior written approval of the other party. Any such assignment shall not relieve Phonoscope or the District of its primary liability for performance of its duties and obligations hereunder.

## **X. Indemnification**

- A.** To the fullest extent permitted by law, Phonoscope shall indemnify and hold harmless the District, its trustees, employees, and agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance under the Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the DWAFON itself) including loss of use resulting



therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of Phonoscope or anyone directly or indirectly employed by Phonoscope or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

In claims against any person or entity indemnified under this Paragraph X. (A.) by an employee of Phonoscope, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph X. (A.) shall not be limited by limitation on amount or type of damages, compensation or benefits payable by or for Phonoscope under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **XI. Duties of District**

- A. Duties of District:** The District shall provide Phonoscope with reasonable access to the District's property and to the District's employees, agents and contractors to perform its obligations and to exercise its privileges under this Agreement, including provision of working space and reasonable storage space, subject to the District's reasonable and customary security procedures.

The District shall not permit anyone other than Phonoscope or its authorized agent or contractor to repair the Applicable Fiber. The District shall not attempt to use the Applicable Fiber for a use for which it was not designed or in excess of its stated capacity.

- B. Cooperation with Phonoscope:** The District will give Phonoscope prompt notice of any malfunction of the Applicable Fiber. District will comply with Phonoscope's policies from time to time in effect in connection with reporting malfunctions. The District shall render reasonable cooperation to Phonoscope whenever requested to do so in connection with a malfunction of the Applicable Fiber.
- C. Damage:** The District will not damage the Applicable Fiber nor permit anyone else to do so.
- D. Cost of Loss:** The District shall be responsible for the cost of any loss, or any repairs or maintenance occasioned by failure of the District to perform its obligations under this Agreement.